United Nations A/HRC/35/28/Add.4

General Assembly

Distr.: General
2 June 2017

English only

Human Rights Council
Thirty-fifth session
6-23 June 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the United Kingdom of Great Britain and Northern Ireland: comments by the State*

* Reproduced as received.

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I. Freedom of association

A. Countering extremism and terrorism

1. Prevent Strategy

7. The Prevent strategy (2) is the second pillar of CONTEST, the State's counter-terrorism strategy. (3) A first version of CONTEST was published in 2006. Prevent aims at "(a) respond[ing] to the ideological challenge [the country] face[s] from terrorism and aspects of extremism, and the threat [it] face[s] from those who promote these views, (b) provid[ing] practical help to prevent people from being drawn into terrorism and ensure they are given appropriate advice and support; and (c) work[ing] with a wide range of sectors (including education, criminal justice, faith, charities, online and health) where there are risks of radicalisation that [the authoritities] need to deal with".(4) Prevent focuses on individuals and groups who "vocal[ly] or active[ly] oppos[e] fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs"(5) and who are seen as being predisposed to respond positively to terrorist ideologies.

The quote is taken from the Government's Prevent duty guidance but is however out of context in that it describes how the UK defines extremism rather than a description of the types of individuals that Prevent focuses on.

Prevent is concerned with challenging extremist ideas where they are used to legitimise terrorism and are shared by terrorist groups. However, that isn't the framework used to identify individuals to focus on for support/interventions.

9. For example, the duty imposed on certain categories of public officials, including teachers, to observe, record and report individuals they may consider "extremist" has led to undue restrictions on student union activities and the singling out of students from minority communities. In one instance, a 17-year old student was targeted as he expressed his solidarity with the people of the State of Palestine by wearing a Palestine badge and scarf and distributing leaflets on the humanitarian situation there. The student was referred to the authorities under the Prevent strategy, and two police officers subsequently came to his house to question him on his views on Palestine, Israel and the Middle East.6 In addition, environmentalists, anti-capitalist groups and some Members of Parliament have reportedly been provided as examples of extremists in Prevent trainings.

The Prevent duty requires governing bodies to 'have due regard to the need to prevent people from being drawn into terrorism'. The duty is not on individual teachers.

The school involved has specifically and publicly denied the claims that the student was referred to Prevent because he was wearing a badge supporting Palestine. Please see link below for further information:

http://www.lutontoday.co.uk/news/education/challney-boys-denies-claims-student-was-referred-to-prevent-for-wearing-free-palestine-badge-1-7219114

12. Third, the Prevent strategy draws a nearly automatic link between extremism and terrorism. However, British law makes a clear distinction between the two. The 2000 Terrorism Act defines terrorism as the "use or threat of action… designed to influence the Government… or to intimidate the public or a section of the public… for the purpose of advancing a political, religious or ideological cause".13 "Extremism," meanwhile, is vaguely defined in Prevent as "opposition to British values."

Prevent does not draw an automatic link and no evidence is provided to support this conclusion.

14. Overall, it appears that Prevent is having the opposite of its intended effect: by dividing, stigmatizing and alienating segments of the population, Prevent could end up promoting extremism, rather than countering it. The Special Rapporteur was disappointed to learn that the Government announced in October 2016, following an internal review, that Prevent should be strengthened. There was reportedly no public consultation around this review, which he considers particularly troubling in light of the public concerns voiced by several stakeholders. He reiterates the call made by the Independent Reviewer of Terrorism Legislation, the parliamentary Joint Committee on Human Rights, the United Nations Committee on the Rights of the Child, and several civil society actors, for an independent review of the strategy to be completed. Inputs from all relevant stakeholders should be sought in such processes.

The UK Government would like to make clear that there is no evidence provided to support the conclusion that, overall, this is the case.

No account has been provided in the report of the positive influence of Prevent, for example in the 2015 CONTEST report to Parliament it was highlighted that:

- Over 1000 people supported through Channel
- Over 150 journeys to Syria prevented in 2015;
- Over 75,000 people have been engaged through Prevent community projects or by Prevent coordinators in 2015

2. Counter-Extremism and Safeguarding Bill

15. The Special Rapporteur expresses similar concern about the Counter-Extremism and Safeguarding Bill. It was originally introduced in 2015 as the Counter-Extremism Bill, and later renamed. The Bill may authorize the issuance of civil orders to, inter alia, ban non-violent extremist groups, stop individuals engaging in extremist behaviour and close down premises used to support extremists.

16. Initially, the Special Rapporteur is troubled that the Bill apparently seeks to use civil orders with a view to circumventing the opening of criminal cases, which have a higher standard of proof. Even more problematic, however, is the intrinsic vagueness of the term "non-violent extremism" that the Bill targets. Government officials themselves seemed to have trouble defining the term, which signals vast potential for arbitrary and abusive interpretation. The Special Rapporteur cautions the Government to carefully consider the negative unintended consequences of such provisions. It is indeed difficult to define the term "non-violent extremist" without treading into the territory of policing thought and opinion. Innocent individuals will be targeted. Many more will fear that they may be targeted – whether because of their skin colour, religion or political persuasion – and be fearful of exercising their rights. Both outcomes are unacceptable.

17. It is the duty of the Government – and indeed of all States – to do all it can to prevent, limit and mitigate potential terrorist attacks that could arise from extremism. The Special Rapporteur believes that the existing legal framework is robust enough to deal with any issues of extremism and related intolerance that could give rise to terrorism. In this regard, he echoes the findings of the Joint Committee on Human Rights which stated that the "Government should not legislate, least of all in areas which impinge on human rights, unless there is a clear gap in the existing legal framework. The Government has not been able to demonstrate that such a gap exists. We therefore take the view that the Government has not demonstrated a need for new legislation. The current counter-terrorism, public order and equality legislation form a comprehensive framework which

deals appropriately with those who promote violence. There is a danger that any new legislation may prove counter-productive".

To clarify. In 2015, the Government announced the introduction of a Extremism Bill, however this Bill was not introduced and there has been no announcement when legislation might be expected. Following the June 2017 General Election, the new Government will publish its legislative programme.

C. Trade Unionism

44. The Government subsequently addressed a number of issues following consultation with various stakeholders. Consideration of their views resulted in a number of proposals not being included in the Bill, including a requirement for the, annual reporting of picketing and protesting activities and for detailed plans about pickets and social media campaigns to be published two weeks in advance. This is most welcome. The Special Rapporteur urges the Government not to reintroduce these provisions in the future.

In addition, the Government has consulted on plans to allow employers to hire agency staff to replace some striking workers and the Government is considering the responses.

46. Parts of the Act also unduly restrict picketing. Under the Act, a union must appoint a picket supervisor whose name and contact details must be shared with the police.(55) Furthermore, under the Act, the Certification Officer, a statutory office holder responsible for regulating trade unions is granted broader powers to investigate union's affairs,56 and access confidential records, such as names and addresses of union members.57 Finally, the Act does not recognize the use of electronic balloting for industrial action and strikes, something that has been long requested by unions. Rather, it allows only for the study of electronic balloting, via an independent review of the possibility of fraud or hacking.58 The review was announced in November 2016, and a call for evidence was made in March 2017. The outcome of this review will later be presented before Parliament.

We would like to clarify that parts of the Act also introduce new picketing requirements which are derived from the Code of Practice on Picketing which has been used by trade unions since 1992. The Code recommended and the Act now provides that unduly restrict picketing. Furthermore, under the Act, the Certification Officer, a statutory office holder responsible for regulating trade unions is granted broader powers to investigate union's business practices to ensure effective regulation of trade unions. A further power (not yet in force) will require unions to pay partial costs (a levy) towards the Certification Officer

The Act allows for an independent review of electronic balloting, in the round including the security of technology. The review was announced in November 2016, and a call for evidence was made in March 2017 – because of the General Election recently called in the UK, the call for evidence will now close on 14 July 2017. The outcome of this review will be laid in Parliament before the end of 2017.

47. The Special Rapporteur regrets that the Government decided to rush the Bill to Parliament, despite admissions from officials that they anticipated extensive litigation over various provisions. He finds such an approach vexing, because the process of drafting legislation should be a meticulous one, where time is taken to ensure inclusiveness, clarity and conformity with other laws. He calls on the Government to amend the Trade Union Act with a view to ensuring its full compliance with international labour rights norms and standards.

III. Freedom of peaceful assembly

B. Other issues of Concern

1. Restrictions on-organisation of protests

60. The Special Rapporteur also learnt that the London Metropolitan Police had imposed additional costs on protest organizers to cover expenses related to security of businesses and traffic management and instructed them to hire stewards for the planned protest. He underscores that "[t]he State's obligation to facilitate [protests] includes the responsibility to provide basic services, including traffic management.... Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.

The London Metropolitan Police Service neither charges nor has charged organisers for the policing of protests

3. Resort to mass arrests, stop and search powers and dispersal powers

67. The Special Rapporteur raised these issues with the authorities and was informed that in 2014, the Home Office and the College of Policing launched the Best Use of Stop and Search Scheme, which aims at a more strategic use of the practice across England and Wales. One of the features of this Scheme is to reduce 'no suspicion' stop and searches under Section 60 of the Criminal Justice and Public Order Act 1994. He was further informed that when a person is stopped and searched in the context of a protest his or her name, age and address are not taken, but only information on his/her ethnic group is collected. Despite such assurances, the Special Rapporteur underscores the chilling effect of such practice among protestors. He recalls that "[s]top-and-search must not be arbitrary and must not violate the principle of non-discrimination. It must be authorized by law, necessary and proportionate. The mere fact that an individual is participating in a peaceful assembly does not constitute reasonable grounds for conducting a search" (82)

All 43 Home Office forces, with the addition of the British Transport Police, voluntarily adopted the Best Use of Stop and Search Scheme.

One of the features of this Scheme is to reduce 'no suspicion' stop and searches under Section 60 of the Criminal Justice and Public Order Act 1994. This power can be authorised for a period of time in a particular location where there has been, or there may be, incidents involving serious acts of violence or persons are carrying dangerous instruments or offensive weapons without good reason.

When a person is stopped and searched under this legislation or any other stop and search power in the context of a protest or otherwise, the statutory Code of Practice that applies in these cases is explicit that they are under no obligation to provide any personal details, such as a name, age and address. The Code also goes on to say that "the person should not be asked to provide this information for the purpose of completing the record" [of the search]. Officers will record the self defined ethnicity of the person or, where this is not given, the officer will record their defined ethnicity as observed. This is required by legislation for racial equality monitoring purposes.